IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 489 OF 2005

Mr. Kiran Dinkar Patil ...Petitioner

Versus

Prashant Mahadeo Karande & Anr ...Respondents

.....

Mr. Dilip Bodake, Advocate for Petitioner

Mr. N.D. Hambalkar, Adv. for Respondent No.2.

Mr. S.R. Shinde, A.P.P. for State.

.....

CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 9TH SEPTEMBER, 2005

P. C.:-

1. Heard the learned advocate for the petitioner i.e. original accused, learned advocate for the respondent No.1 i.e. original complainant and the learned A.P.P. for the State.

2. Rule. By consent, Rule made returnable forthwith.

3. The petitioner is facing prosecution in case i.e. S.C.C. No. 1934 of 2003 which is pending before the J.M.F.C. Court No.2, Karad. The said case is under Section 138 of Negotiable Instruments Act.

4. It is the case of the petitioner that he had not issued the cheque in question and in fact the cheque was lost and the same has been misused by the complainant. In respect of this contention, the petitioner has placed reliance on the notice which he had issued in the newspaper stating that his bag and other articles including the cheque book were lost.

5. The petitioner had preferred an application before the learned Magistrate (Exh.24) praying therein that the said cheque be sent to the hand writing expert as well as to other experts for checking the handwriting and the ink used in making out the cheque. The said application came to be rejected by the learned Magistrate. Hence, this petition.

6. In the present case, it is seen that the cheque is dated 11.7.2003 and the complaint in respect of the dishonour of the said cheque was filed on 7.10.2003. Before the complaint was filed, a notice had been issued to the petitioner, however, he had not replied to the said notice. The complaint was lodged on 7.10.2003, however, the application for forwarding the cheque to experts came to be filed almost a year later by the petitioner. For the first time, on 14.9.2004 when the application at Exh.24 came to be filed, the petitioner came out with a case

that the cheque book had been lost and the complainant misused this lost cheque. This stand has not been taken by the petitioner at the first time when the notice was issued by him. This is clearly shows that it is an after thought on the part of the petitioner. Moreover, the questions whether the accused is under a legally enforceable liability i.e. whatever he owes a legally dischargeable debt are questions to be determined only after a full fledged trial. The learned Magistrate has taken this aspect into consideration as well as other aspects in his order dated 17.11.2004 whereby the application of the petitioner came to be rejected. I find no error in the said order, hence, no interference is called for. Writ petition is rejected. Rule discharged.

7. The learned Magistrate shall not be influenced by any observations in this order while deciding the trial.

*****